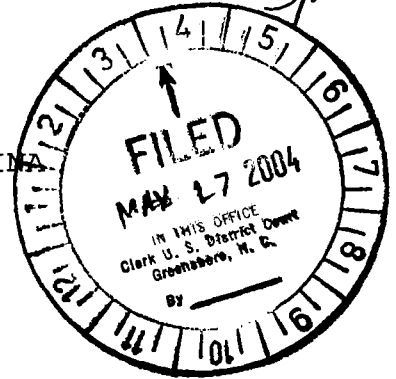


13.

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA



MICHAEL KEVIN BOLTINGHOUSE, )

Plaintiff, )

v. )

STEPHEN P. WARNER; ELLA L. )

WASHINGTON; and Commissioner )

of the Internal Revenue )

Service, )

Defendants. )

CIVIL NO. 1:03CV01159

MEMORANDUM OPINION

BULLOCK, District Judge

Plaintiff, proceeding pro se, has brought an action against two employees of the Internal Revenue Service and the Commissioner of Internal Revenue. Plaintiff seeks to enjoin the Internal Revenue Service from refusing to accept his Form W-4, claiming that he is exempt from withholding. This action apparently arose from the Internal Revenue Service's assessment of a \$500.00 penalty against Plaintiff pursuant to 26 U.S.C. § 6682 for filing a false W-4, Employee's Withholding Allowance Certificate.

The Anti-Injunction Act, 26 U.S.C. § 7421(a) provides that "no suit for the purpose of restraining the assessment or

collection of any tax shall be maintained in any court by any person." To the extent that the Plaintiff is seeking a declaration that he is exempt from taxes, declaratory judgments are prohibited in federal tax cases under 28 U.S.C. § 2201(a). Furthermore, only the United States is a proper party defendant and there has been no explicit waiver of sovereign immunity for any other relief sought by the Plaintiff. The assessment made against the Plaintiff was for a penalty under 26 U.S.C. § 6682. While the Plaintiff may claim that the court has subject matter jurisdiction under 26 U.S.C. § 7429(b), which provides for judicial review of jeopardy levies and assessments, there has been no jeopardy levy or assessment against the Plaintiff. Furthermore, to the extent that Plaintiff seeks emotional damages pursuant to 26 U.S.C. § 7433, all administrative remedies must be exhausted under that section.

Despite the efforts by the Internal Revenue Service to allow the Plaintiff to amend his Form W-4 to comply with the law, Plaintiff has persisted in his argument that, although he was born in the United States, resides in Durham, North Carolina, and is employed by the Men's Wear House, he is not subject to taxes. The bases for these arguments are clearly frivolous and have been repeatedly rejected by the courts.

The court will grant the Defendants' motion to dismiss, deny Plaintiff's motion for summary judgment, and dismiss this action with prejudice.

An order in accordance with this memorandum opinion shall be entered contemporaneously herewith.

May 17<sup>th</sup>, 2004

  
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United States District Judge